



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

In the Matter of

Mr. Francis Guilbeau

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IA-11-032

NRC-2012-0005

ORDER PROHIBITING INVOLVEMENT IN NRC-LICENSED ACTIVITIES

I

Mr. Francis Guilbeau was employed as a Radiographer at Accurate NDE & Inspection, LLC, (Accurate NDE or Licensee) located in Broussard, Louisiana, in March 2010. Accurate NDE is the holder of a general license issued by the U.S. Nuclear Regulatory Commission (NRC or the Commission) pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) 150.20. This general license was granted to Accurate NDE at various times during calendar years between 2005 through 2011.

II

On May 26, 2010, the NRC conducted a special inspection of licensed activities involving the use of byproduct material for industrial radiography conducted under a general license pursuant to the provisions of 10 CFR 150.20. The inspection was conducted in response to an event that occurred on March 15, 2010, involving the loss of a sealed source of iridium-192 while performing licensed activities in offshore Federal waters. On June 28, 2010, the NRC's Office of Investigations, Region IV, began an investigation (Case No. 4-2010-062) to

determine, in part, whether Mr. Guilbeau: (1) willfully failed to follow operating procedures by attempting to retrieve a disconnected source without making the proper notifications and obtaining authorization from the Accurate NDE radiation safety officer (RSO); and (2) willfully recorded an inaccurate number for a pocket dosimeter reading on the Accurate NDE Daily Radiation Report dated March 14, 2010. By letter dated July 28, 2011 (ML11209B637), the NRC informed Mr. Guilbeau that the NRC was considering escalated enforcement action for two apparent violations of NRC's deliberate misconduct rule, 10 CFR 30.10. The NRC offered Mr. Guilbeau the opportunity to request a predecisional enforcement conference or request alternative dispute resolution (ADR) with the NRC in an attempt to resolve issues associated with this matter. In response, Mr. Guilbeau requested a predecisional enforcement conference. A predecisional enforcement conference was held with Mr. Guilbeau on August 25, 2011, in an effort to obtain Mr. Guilbeau's point of view on the violations.

Based on the NRC review of the information obtained during the predecisional enforcement conference, the inspection and the investigation, two violations of the NRC's rule prohibiting deliberate misconduct, 10 CFR 30.10, were identified. First, Mr. Guilbeau engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(1) by causing Accurate NDE to be in violation of 10 CFR 150.20(b)(5), which requires Accurate NDE to comply with the terms of its State license. Paragraph 21A of the Louisiana State license required Accurate NDE to follow its operating procedures. Accurate NDE's operating procedures prohibit a radiographer from retrieving a disconnected source unless he contacts the radiation safety officer (RSO) first and obtains authorization. Mr. Guilbeau did not contact the RSO or obtain authorization from the RSO prior to attempting retrieval of the source. Therefore, Mr. Guilbeau's actions caused Accurate NDE to be in violation of its Louisiana State license, and 10 CFR 150.20. During an interview with the Office of Investigations, Mr. Guilbeau admitted that he tried to retrieve the source without first contacting the RSO. Mr. Guilbeau also stated in this interview that he knew

radiographers were not supposed to retrieve a source. In a written test on Accurate NDE's procedures taken on March 10, 2010, four days prior to going out on this job, Mr. Guilbeau chose the correct response to a question asking what to do in the event of a source disconnect – a further indication that he knew it was necessary to contact the RSO and that he was not supposed to attempt to put the source back in the camera.

This incident occurred on Mr. Guilbeau's first job back with Accurate NDE after several years working elsewhere. During his previous tenure with Accurate NDE in 2004-2006, Mr. Guilbeau was involved in a similar incident and in that case, he immediately called the office. At the predecisional enforcement conference held on August 25, 2011, Mr. Guilbeau stated repeatedly that his primary aim was to get the "pill" hooked back up so he could start X-raying again. He also indicated that he should have contacted the office first, but it was his first job back with Accurate NDE, and he just wanted to get the work done without any complications.

Because Mr. Guilbeau knew that he was supposed to contact the RSO before attempting to retrieve a source but did not do so, and because his actions caused the license to be in violation of 10 CFR 150.20(b)(5), Mr. Guilbeau's actions constitute deliberate misconduct pursuant to 10 CFR 30.10(a)(1). During the attempted source retrieval, the licensee's conclusion was that the source fell through the grating on the deck of the platform into the Gulf of Mexico. Therefore, as a result of Mr. Guilbeau's actions, the source was lost.

Second, Mr. Guilbeau engaged in deliberate misconduct in violation of 10 CFR 30.10(a)(2) by deliberately submitting to Accurate NDE, an NRC general licensee, information that he knew was inaccurate in some material respect. Specifically, Mr. Guilbeau recorded a number for a pocket dosimeter reading associated with work performed by another radiographer on March 14, 2010, on the Daily Radiation Report, that Mr. Guilbeau knew was inaccurate. During an interview by the Office of Investigations, Mr. Guilbeau admitted he did not know what the other radiographer's true radiographic dose exposure was for March 14, 2010, and

estimated a number on the licensee's Daily Radiation Report for that shift. During the predecisional enforcement conference, Mr. Guilbeau stated that he could not remember receiving the other radiographer's radiographic dose exposure that would have been recorded at the end of the shift. This would indicate that Mr. Guilbeau did not enter the correct dose exposure reading for the other radiographer on the Daily Radiation Report. As a result, Mr. Guilbeau deliberately submitted information to Accurate NDE, an NRC general licensee, information that he knew to be inaccurate in some respect material to the NRC. This was a violation of 10 CFR 30.10(a)(2). In addition, because the Daily Radiation Report is a record that Accurate NDE is required to keep pursuant to 10 CFR 34.83 and 34.47(b), Mr. Guilbeau's actions caused Accurate NDE to be in violation of 10 CFR 30.9(a), which requires that information required by regulation to be maintained by a licensee must be accurate in all material respects.

III

Based on the above, the NRC has concluded that Mr. Francis Guilbeau, a former employee of Accurate NDE, violated 10 CFR 30.10(a)(1) by engaging in deliberate misconduct that caused Accurate NDE to be in violation of 10 CFR 150.20(b)(5) and 30.9. Further, Mr. Guilbeau deliberately provided to Accurate NDE information that he knew to be incomplete or inaccurate in some respect material to the NRC, in violation of 10 CFR 30.10(a)(2).

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement that general licensees operating under the reciprocity provisions of 10 CFR 150.20 comply with the terms and conditions of their Agreement State licenses and the requirement to provide information and maintain records that are complete and accurate in all material respects. Mr. Guilbeau's actions caused the Licensee to violate 10 CFR 150.20(b)(5) and 10 CFR 30.9 and have raised serious doubt as to whether he can be relied

upon to comply with NRC requirements and to provide complete and accurate information to the NRC.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Mr. Guilbeau were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Guilbeau be prohibited from any involvement in NRC-licensed activities for a period of 1 year from the effective date of this Order, as defined in Section V. Additionally Mr. Guilbeau is required to notify the NRC of his first employment in NRC-licensed activities for a period of 1 year following the prohibition period.

IV

Accordingly, pursuant to Sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, 10 CFR Parts 20, 34, and 10 CFR 150.20, IT IS HEREBY ORDERED THAT:

1. Mr. Francis Guilbeau is prohibited for 1 year from the effective date of this Order, as defined in Section V, from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. Specifically, Mr. Guilbeau is prohibited from performing, supervising, assisting or otherwise engaging in (1) industrial radiography for an Agreement State licensee that is conducted in non-Agreement States, in areas of exclusive federal jurisdiction within Agreement States, or

in offshore waters under an NRC general license granted pursuant to 10 CFR 150.20,
(2) industrial radiography for an NRC licensee, including, but not limited to, radiography conducted under the authority of a license issued pursuant to 10 CFR Part 34, and
(3) any other licensed activity under NRC jurisdiction.

2. As of the effective date of this Order, if Mr. Guilbeau is currently involved in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.
3. For a period of 1 year after the 1-year period of prohibition has expired, Mr. Guilbeau shall, within 20 days of acceptance of his first employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in the NRC-licensed activities. In the notification, Mr. Guilbeau shall include a statement of his commitment to compliance with NRC regulatory requirements and the basis for why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Mr. Guilbeau of good cause.

In accordance with 10 CFR 2.202, Mr. Francis Guilbeau must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of its issuance date. In addition, Mr. Guilbeau and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its issuance date. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at hearing.docket@nrc.gov, or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established

an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, web-based submission form. In order to serve documents through NRC's Electronic Information Exchange (EIE), users will be required to install a web browser plug-in from the NRC Web site. Further information on the web-based submission form, including the installation of the web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in portable document format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the

Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at MSHD.Resource@nrc.gov, or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) first class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket, which is available to the public at <http://ehd1.nrc.gov/ehd/>, unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

If a person other than Mr. Francis Guilbeau requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by Mr. Guilbeau or any other person whose interest is adversely affected, the Commission will issue an order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. In the absence of any request for hearing or ADR, or written approval of an extension of time in which to request a hearing, the effective date of this Order (the date that the provisions specified in Section IV above become final and effective) shall be 30 days from the issuance date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the effective date of this Order shall be when the

extension expires if a hearing request has not been received. If a hearing or ADR is requested, the effective date of this Order shall be determined in accordance with the hearing or ADR process.

FOR THE NUCLEAR REGULATORY COMMISSION

/RA/

Roy P. Zimmerman, Director
Office of Enforcement

Dated this 5th day of January 2012

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